# EXPLANATORY STATEMENT

## Select Legislative Instrument 2010 No. 297

Issued by the Minister for Immigration and Citizenship

*Migration Act 1958*

*Immigration (Education) Act 1971*

*Australian Citizenship Act 2007*

*Migration Legislation Amendment Regulations 2010 (No. 2)*

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 13 of the *Immigration (Education) Act 1971* (the Education Act) provides that the Governor-General may make regulations, not inconsistent with the Education Act, prescribing all matters required or permitted by the Education Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Education Act.

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

In addition regulations may be made pursuant to the provisions listed in Attachment A.

The Regulations amend the *Migration Regulations 1994* (the Principal Regulations), the *Immigration Education Regulations 1992* (the Education Regulations) and the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) to strengthen and improve immigration policy.

In particular, the Regulations amend the Principal Regulations to:

- make minor amendments to rectify incorrect cross references, which affect the visa conditions which can be imposed on the Subclass 475 (Skilled – Regional Sponsored) visa and the Subclass 487 (Skilled – Regional Sponsored) visa (Schedule 1 to the Regulations refers); and
- make minor amendments to the definition of "specified regional area" in Part 887 of Schedule 2 to the Principal Regulation (Schedule 1 to the Regulations refers).

The Regulations also amend the Education Regulations to:

- remove provisions made redundant by the Education Act (Schedule 2 to the Regulations refers);
- prescribe the method of applying for an extension of timeframes for registering in, commencing and completing English courses for different groups of clients, and prescribe the matters that the Secretary of the Department of Immigration and Citizenship

(the Secretary) must take into account when granting an extension to different groups of clients (Schedule 2 to the Regulations refers); and

- prescribe the class of persons that may be provided with a citizenship course under the new section 4E of the Education Act (Schedule 2 to the Regulations refers).

Finally, the Regulations amend the Citizenship Regulations to update the references to instruments made under subregulation 5.36(1) and subregulation 5.36(1A) of the Principal Regulations which relate to the payment of fees in foreign currencies and countries (Schedule 3 to the Regulations refers).

Details of the Regulations are set out in Attachment B.

The Regulations commence on 1 January 2011.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to all schedules and advises that the regulations are not likely to have a direct effect, or substantial indirect effect, on business and are not likely to restrict competition. The OBPR consultation references are:

- 11696, Schedule 1 to the Regulations refers;
- 11735, Schedule 2 to the Regulations refers; and
- 11799 and 11800, Schedule 3 to the Regulations refers.

For Schedule 1 to the Regulations no other consultations have been undertaken as these amendment are technical and machinery in nature.

For Schedule 2 to the Regulations key stakeholder groups in each State and Territory were consulted in relation to the review of the Adult English Migrant Program (AMEP) conducted in 2008. Consultation was undertaken with AMEP clients, AMEP service providers and teachers, settlement service providers, State and Territory government representatives, business representatives and employment service providers.

For Schedule 3 to the Regulations no other consultation was conducted as the amendments are of a minor nature and do not substantially alter existing arrangements.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**ATTACHMENT A**

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the following provisions may apply:

- subsection 40(1) of the Act, which provides that the regulations may provide that visas, or visas of a specified class, may only be granted in specified circumstances; and
- subsection 41(1) of the Act, which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions.

Section 13 of the *Immigration (Education) Act 1971* (the Education Act) provides that the Governor-General may make regulations, not inconsistent with the Education Act, prescribing all matters required or permitted by the Education Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Education Act.

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

In addition, the following provisions may apply:

- paragraph 46(1)(d) of the Citizenship Act provides that an application made under a provision of that Act must be accompanied by the fee (if any) prescribed by the Australian *Citizenship Regulations 2007* (the Citizenship Regulations); and

- subsection 46(3) of the Citizenship Act provides that the Citizenship Regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph 46(1)(d) of that Act.

**ATTACHMENT B**

**Details of the *Migration Legislation Amendment Regulations 2010 (No. 2)***

Regulation 1 – Name of Regulations

Regulation 1 provides that the title of the Regulations is the *Migration Legislation Amendment Regulations 2010 (No. 2)*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence on 1 January 2011.

Regulation 3 – Amendment of *Migration Regulations 1994* – Schedule 1

Subregulation 3(1) provides that Schedule 1 amends the *Migration Regulations 1994* (the Principal Regulations).

Subregulation 3(2) provides that the amendments made by Part 1 of Schedule 1 apply in relation to an application for a visa:

- made but not finally determined (within the meaning of subsection 5(9) of the *Migration Act 1958* (the Act)), before 1 January 2011; and
- made on or after 1 January 2011.

Subregulation 3(3) provides that the amendment made by Part 2 of Schedule 1 applies in relation to an application for a visa made on or after 1 January 2011.

Regulation 4 – Amendment of *Immigration (Education) Regulations 1992* – Schedule 2

Regulation 4 provides that Schedule 2 amends the *Immigration (Education) Regulations 1992* (the Education Regulations).

Regulation 5 – Amendment of *Australian Citizenship Regulations 2007* – Schedule 3

Subregulation 5(1) provides that Schedule 3 amends the *Australian Citizenship Regulations 2007* (the Citizenship Regulations).

Subregulation 5(2) provides that the amendment made by Schedule 3 apply in relation to an application made under Division 2, 3 or 4 of Part 2 of the *Australian Citizenship Act 2007* (the Citizenship Act) on or after 1 January 2011.

**Schedule 1 – Amendments of *Migration Regulations 1994* – skilled visas**

**Part 1 Amendment of references to legislation**

Item [1] – Schedule 2, clause 475.612

This item omits "subclause 475.213(2)," and inserts "subitem 1228(3A) of Schedule 1," in clause 475.612 of Part 475 of Schedule 2 to the Principal Regulations.

Currently, clause 475.612 provides that if the applicant was nominated by a State or Territory government as described in subclause 475.213(2), condition 8539 must be imposed.

Condition 8539 provides that while the holder is in Australia, the holder must live, study and work only in an area specified by the Minister for Immigration and Citizenship (the Minister) in an instrument in writing for item 6A1001 of Schedule 6A as in force:

- when the visa was granted; or
- if the holder has held more than 1 visa that is subject to condition 8539 – when the first of those visas was granted.

*Migration Amendment Regulations (No. 6) 2010* (the Amendment Regulations) removed subclause 475.213(2) in a package of amendments to the criteria requiring a person to be nominated by a State or Territory government. As a consequence, applicants who were granted a Subclass 475 (Skilled – Regional Sponsored) visa on the basis of being sponsored by a State or Territory government, on or after 1 July 2010 have not been subject to condition 8539.

Amended clause 475.612 provides that if the applicant was nominated by a State or Territory government as described in subitem 1228(3A) of Schedule 1 to the Principal Regulations, condition 8539 must be imposed.

The amendment provides that all Subclass 475 (Skilled – Regional Sponsored) visa holders, who are nominated by a State or Territory government, must be subject to condition 8539. This is consistent with policy which was in place prior to the commencement of the Amendment Regulations.

Item [2] – Schedule 2, clause 475.613

This amendment omits "subclause 475.213(3)," and inserts "subclause 475.222(3)," in clause 475.613 of Part 475 of Schedule 2 to the Principal Regulations.

Currently, clause 475.613 provides that if the applicant was sponsored by a person as described in subclause 475.213(3), condition 8549 must be imposed.

Condition 8549 provides that while the holder is in Australia, the holder must live, study and work only in an area specified by the Minister in an instrument in writing for item 6701 of Schedule 6 as in force:

- when the visa was granted; or
- if the holder has held more than 1 visa that is subject to condition 8539 – when the first of those visas was granted.

The Amendment Regulations removed subclause 475.213(3) in a package of amendments to the criteria requiring a person to be sponsored by an eligible relative. As a consequence, applicants who were granted a Subclass 475 (Skilled – Regional Sponsored) visa, on the basis of being sponsored by an eligible relative, on or after 1 July 2010 have not been subject to condition 8549.

Amended clause 475.613 provides that if the applicant was sponsored by a person as described in subclause 475.222(3), condition 8549 must be imposed.

The amendment provides that all Subclass 475 (Skilled – Regional Sponsored) visa holders, who are sponsored by an eligible relative, must be subject to condition 8549. This is consistent with policy which was in place prior to the commencement of the Amendment Regulations.

Item [3] – Schedule 2, clause 487.612

This amendment omits "subclause 487.213(2)," and inserts "subitem 1229(3A) of Schedule 1," in clause 487.612 of Part 487 of Schedule 2 to the Principal Regulations.

Currently, clause 487.612 provides that if the applicant was nominated by a State or Territory government as described in subclause 487.213(2), condition 8539 must be imposed.

Condition 8539 provides that while the holder is in Australia, the holder must live, study and work only in an area specified by the Minister in an instrument in writing for item 6A1001 of Schedule 6A as in force:

- when the visa was granted; or
- if the holder has held more than 1 visa that is subject to condition 8539 – when the first of those visas was granted.

The Amendment Regulations removed subclause 487.213(2) in a package of amendments to the criteria requiring a person to be nominated by a State or Territory government. As a consequence, applicants who were granted a Subclass 487 (Skilled – Regional Sponsored) visa, on the basis of being sponsored by a State or Territory government, on or after 1 July 2010 have not been subject to condition 8539.

Amended clause 487.612 provides that if the applicant was nominated by a State or Territory government as described in subitem 1229(3A) of Schedule 1 to the Principal Regulations, condition 8539 must be imposed.

The amendment provides that all Subclass 487 (Skilled – Regional Sponsored) visa holders, who are nominated by a State or Territory government, must be subject to condition 8539. This is consistent with policy which was in place prior to the commencement of the Amendment Regulations.

Item [4] – Schedule 2, clause 487.613

This amendment omits "subclause 487.213(3)," and inserts "subclause 487.225(3)," in clause 487.613 of Part 487 of Schedule 2 to the Principal Regulations.

Currently, clause 487.613 provides that if the applicant who satisfied the primary criteria for the grant of the visa was sponsored by a person as described in subclause 487.213(3), condition 8549 must be imposed.

Condition 8549 provides that while the holder is in Australia, the holder must live, study and work only in an area specified by the Minister in an instrument in writing for item 6701 of Schedule 6 as in force:

- when the visa was granted; or
- if the holder has held more than 1 visa that is subject to condition 8549 – when the first of those visas was granted.

The Amendment Regulations removed subclause 487.213(3) in a package of amendments to the criteria requiring a person to be sponsored by an eligible relative. As a consequence, applicants who were granted a Subclass 487 (Skilled – Regional Sponsored) visa, on the basis of being sponsored by an eligible relative, on or after 1 July 2010 have not been subject to condition 8549.

Amended clause 487.613 provides that if the applicant was sponsored by a person as described in subclause 487.225(3), condition 8549 must be imposed.

The amendment provides that all Subclass 487 (Skilled – Regional Sponsored) visa holders, who are nominated by a State or Territory government, must be subject to condition 8549. This is consistent with policy which was in place prior to the commencement of the Amendment Regulations.

**Part 2 Specified regional area**

Item [5] – Schedule 2, clause 887.111

This item substitutes clause 887.111 with new clause 887.111 in Part 887 of Schedule 2 to the Principal Regulations.

Currently, clause 887.111 provides that in Part 887, specified regional area means:

- for an applicant who applied for a Subclass 887 visa on the basis of having held:
    - a Skilled – Independent Regional (Provisional) (Class UX) visa; or
    - a Skilled (Provisional) (Class VC) visa that is subject to condition 8539; or
    - a Skilled (Provisional) (Class VF) visa that is subject to condition 8539;

  a part of Australia that, at the time at which a visa of that kind was first granted to the applicant, was specified by the Minister in an instrument in writing under item 6A1001 of Schedule 6A; or
- for an applicant who applied for a Subclass 887 visa on the basis of having held:
    - a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa; or
    - a Skilled (Provisional) (Class VC) visa that is subject to condition 8549; or
    - a Skilled (Provisional) (Class VF) visa, subject to condition 8549;

  a part of Australia that, at the time at which a visa of that kind was first granted to the applicant, was specified by the Minister in an instrument in writing under item 6701 of Schedule 6.

New clause 887.111 provides a new definition of “specified regional area” for the purposes of Part 887 of Schedule 2 to the Principal Regulations.

New subclause 887.111(1) provides that in Part 887, specified regional area, for an applicant who applies for a Subclass 887 visa, means a part of Australia identified in accordance with new subclause 887.111(2) or 887.111(3).

New subclause 887.111(2) provides that:

- if an applicant applies for the Subclass 887 visa on the basis of having held:
    - a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa; or
    - a Skilled (Provisional) (Class VC) visa that is subject to condition 8549; or
    - a Skilled (Provisional) (Class VF) visa, that is subject to condition 8549; or
    - a Subclass 475 (Skilled – Regional Sponsored) visa in relation to which:
        - the application for the visa was made on or after 1 July 2010; and
        - the visa was granted in the period starting on 1 July 2010 and ending on 31 December 2010; and
        - the visa was granted on the basis that the requirements of subclause 475.222(3) were satisfied; or
    - a Subclass 487 (Skilled – Regional Sponsored) visa in relation to which:
        - the application for the visa was made on or after 1 July 2010; and
        - the visa was granted in the period starting on 1 July 2010 and ending on 31 December 2010; and
        - the visa was granted on the basis that the requirements of subclause 487.225(3) were satisfied;

  a specified regional area is a part of Australia that, at the time at which a visa of that kind was first granted to the applicant, was specified by the Minister in an instrument in writing under item 6701 of Schedule 6.

New subclause 887.111(3) provides that:

- if the applicant applies for the Subclass 887 visa on the basis of having held:
    - a Skilled – Independent Regional (Provisional) (Class UX) visa; or
    - a Skilled (Provisional) (Class VC) visa that is subject to condition 8539; or
    - a Skilled (Provisional) (Class VF) visa that is subject to condition 8539;
    - a Subclass 475 (Skilled – Regional Sponsored) visa in relation to which :
        - the application for the visa was made on or after 1 July 2010; and
        - in making the application, the requirements of subitem 1228(3A) of Schedule 1 were satisfied; and
        - the visa was granted in the period starting on 1 July 2010 and ending on 31 December 2010; or
    - a Subclass 487 (Skilled – Regional Sponsored) visa in relation to which:
        - the application for the visa was made on or after 1 July 2010; and
        - in making the application, the requirements of subitem 1229(3A) of Schedule 1 were satisfied; and

- the visa was granted in the period starting on 1 July 2010 and ending on 31 December 2010;

a specified regional area is a part of Australia that, at the time at which a visa of that kind was first granted to the applicant, was specified by the Minister in an instrument in writing under item 6A1001 of Schedule 6A.

This amendment rectifies an error caused by the Amendment Regulations to holders of either a Subclass 475 (Skilled – Regional Sponsored) visa or a Subclass 487 (Skilled – Regional Sponsored) visa, whose visa grant is not subject to either condition 8539 or 8549 and the visa application was made on or after 1 July 2010 and the visa application was approved between the period commencing 1 July 2010 and ending on 31 December 2010.

The error has excluded those holders of Subclass 475 (Skilled – Regional Sponsored) and Subclass 487 (Skilled – Regional Sponsored) visas from the definition of "specified regional area". To satisfy the definition, applicants must be the holder of a visa class as described in clause 887.111. "Specified regional area" is used in certain visa criteria which must be satisfied by the applicant before an application for a Subclass 887 (Skilled – Regional) visa can be approved.

This amendment allows applicants for a Subclass 887 (Skilled – Regional) visa, who have made their application on the basis of holding either a Subclass 475 (Skilled – Regional Sponsored) or a Subclass 487 (Skilled – Regional Sponsored) visas which is not subject to either condition 8539 or 8549 to satisfy the definition of "skilled regional area".

**Schedule 2 – Amendments of *Immigration (Education) Regulations 1992***

Item [1] – Regulations 3 to 6

This item substitutes current regulations 3, 4, 5, and 6 with new regulations 3, 4, 5, 6, 7 and 8 to the Education Regulations.

*Regulation 3 - Definition*

Regulation 3 currently prescribes the defined terms applicable to the Education Regulations. Currently, the following definitions are included in regulation 3:

- CES;
- formal course;
- prescribed English course; and
- the Act.

"CES", "formal course" and "prescribed English course" definitions refer to terms used in regulations 4 and 5 to the Education Regulations.

New regulation 3 provides that "*Act*" means the *Immigration (Education) Act 1971* (the Education Act). This amendment is consequential to the substitution of regulations 4 and 5, which remove all references to "CES", "formal course" and "prescribed English course" from the Education Regulations.

The note to new regulation 3 provides that several other words and phrases used in the Education Regulations have the meaning given by section 3 of the Education Act, for example "Secretary" and "visa commencement day".

The purpose of the amendment is to ensure that readers are aware several other words and phrases used in the Education Regulations have the same meaning given by section 3 of the Education Act. For example: "Secretary" and "visa commencement day".

*Regulation 4 – Ineligibility for English courses – application for extension of period for registration or commencement*

Regulation 4 currently prescribes the fees for English courses for the purposes of subsection 4A(1) of the Education Act.

This amendment is consequential to the repeal of section 4A of the Education Act from 1 January 2011. Section 4A of the Act currently provides for the recovery and charging of fees for certain English courses provided under the Act.

New regulation 4 sets out for the purposes of paragraph 4C(4)(a) of the Education Act from 1 January 2011, arrangements in relation to an application for an extension of a period mentioned in subsection 4C(2) of the Education Act. Those new arrangements are that:

- if the applicant is aged under 18 years on the applicant's visa commencement day, an application for extension of a subsection 4C(2) period must be made:
    - in writing; and
    - by the earlier of:
        - 14 days after the day on which the applicant (or a person acting for the applicant) requests an extension through the provider the approved English course with which the applicant has registered or proposes to register; and
        - 12 months of the applicant's visa commencement day; or
- if the applicant is aged 18 years or over on the applicant's visa commencement day, an application for an extension of a subsection 4C(2) period must be made:
    - in writing; and
    - not later than 14 days after the day on which the applicant (or a person acting for the applicant) requests an extension through the provider of the approved English course with which the applicant has registered or proposes to register.

This amendment provides the method in which an application for an extension of the time limit for registration or commencement in English courses as prescribed in subsection 4C(2) of the Education Act must be made.

In the case of an applicant who is under 18 years of age, the applicant must apply for an extension within 12 months of their visa commencement day. This ensures that persons under 18 years of age who cease to attend school within the first 12 months of their visa commencement day are able to register in an English course at anytime within those 12 months. This also ensures that a person under the age for 18 years must make their application for extension within that time period.

*Regulation 5 – Ineligibility for English courses – decision on application for extension of period for registration or commencement*

Regulation 5 currently refers to prescribing certain matters for the purposes of section 4A of the Education Act.

This amendment is consequential to the repeal of section 4A of the Education Act from 1 January 2011. Section 4A of the Act currently provides for the recovery and charging of fees for certain English courses provided under the Act.

Subsection 4C(6) of the Education Act provides from 1 January 2011 that in making a decision whether to extend the registration or commencement timeframe of an application, the Secretary for the Department of Immigration and Citizenship (the Secretary) must take into account the matters prescribed by the Education Regulations and must not have regard to any other matter.

New regulation 5 prescribes the different matters the Secretary must have regard to in making a decision for an extension of a period defined in new subsection 4C(2) of the Education Act, depending on whether the applicant is aged under 18 years, or aged 18 years or over.

New subregulation 5(1) provides for the purpose of new paragraph 4C(6)(a) the matters in which the Secretary must have regard to in making a decision on an application for an extension of a period mentioned in new subsection 4C(2) of the Education Act.

New subregulation 5(2) provides that new subregulation 5(3) applies only in relation to:

- an applicant who was aged under 18 years on the applicant's visa commencement day; and
- the period of 12 months starting on the applicant's visa commencement day.

If the applicant meets the criteria of new subregulation 5(2), the Secretary must have regard in new subregulation 5(3), if applicable, to:

- any serious illness or injury suffered by the applicant during the period, including the duration of the illness of injury; and
- the kinds of commitments that the applicant had to members of the applicant's family during the period; and
- whether any compelling and compassionate reasons for making a particular decision on the application existed during the period.

This amendment provides the matters that the Secretary must have regard to in making a decision for extension of the time limit for registration or commencement in English courses as provided in subsection 4C(2) of the Education Act for an applicant who is under 18 years of age on the applicant's visa commencement day and if the application for extension was made in the period of 12 months starting on the applicant's visa commencement day.

Without limiting the generality of the commitments the Secretary may consider under paragraph 5(3)(b), they may include providing assistance to satisfy family financial commitments, caring commitments for younger family members or caring commitments of other family members.

New subregulation 5(4) provides that new subregulation 5(5) applies only to applicants who are:

- aged 18 years or over on the applicant's visa commencement day; and
- the period starting on the applicant's visa commencement day and ending at the earlier of:
    - 5 years after that day; and
    - the day on which the applicant makes the application.

If the applicant meets the criteria of new subregulation 5(4), the Secretary must have regard to the matters provided for in new subregulation 5(5), if applicable, to:

- the applicant's employment record during the period; and
- the applicant's record during the period in learning English; and
- any serious illness or injury suffered by the applicant during the period, including the duration of the illness or injury; and
- the kinds of commitments that the applicant had to members of the applicant's family during that period; and
- whether the applicant was not in Australia at any time during the period; and
- whether any compelling and compassionate reasons for making a particular decision on the application existed during the period.

This amendment provides the matters that the Secretary must have regard to in making an decision for extension of the time limit for registration or commencement in English courses as provided in subsection 4C(2) of the Education Act, for an applicant who is 18 years or over.

Without limiting the generality of the commitments the Secretary may consider under subregulation 5(5), they may include providing assistance to satisfy family financial commitments, caring commitments for younger family members or caring commitments of other family members.

*Regulation 6 – Ineligibility for English courses – application for extension of the time limit on tuition*

Regulation 6 currently provides the matters that the Secretary "may only" have regard to in determining whether it is unreasonable for an obligation to cease, for the purposes of paragraph 4D(3)(b) of the Education Act.

Paragraph 4D(4)(a) of the Education Act provides from 1 January 2011 that an application made under new subsection 4D(3) of the Act for an extension of time for eligibility for tuition mentioned in new subsection 4D(2) must be made to the Secretary in the manner, and within the period, prescribed in the Education Regulations.

New subsection 4D(2) provides from 1 January 2011 that a person ceases to be eligible for tuition at the end of 5 years starting from the applicant's visa commencement day.

New regulation 6 provides for the purposes of paragraph 4D(4)(a) of the Education Act from 1 January 2011, that an application for an extension of the period mentioned in new subsection 4D(2) of the Education Act must be made subject to the following:

- in writing; and
- no later than 14 days after the day on which the applicant (or a person acting for the applicant) requests an extension through the provider of the approved English course with which the applicant has registered.

This amendment provides the method in which an application for an extension of the time limit for completion of tuition in English courses as mentioned in new subsection 4D(2) of the Education Act.

*Regulation 7 – Ineligibility for English courses – decision on application for extension of the time limit on tuition*

Subsection 4D(6) of the Education Act provides that from 1 January 2011 when making a decision whether to extend the timeframe of the period for making a decision on an application as mentioned in subsection 4D(2) of the Act, the Secretary must have regard to matters prescribed in new subregulation 7(3) if they also meet the criteria in new subregulation 7(2).

New subregulation 7(1) prescribes for paragraph 4D(6)(a) of the Education Act, the matters to which the Secretary must have regard in making a decision on an application for an extension of the period mentioned in subsection 4D(2) of the Education Act.

New subregulation 7(2) provides that if the application was made less than 5 years after the applicant's visa commencement day, the Secretary must have regard to the time remaining before the end of 5 years after that day.

New subregulation 7(3) provides the matters the Secretary must also have regard to when making a decision on an application for an extension of the period mentioned in subsection 4D(2) of the Act:

- any serious illness or injury suffered by the applicant during the period starting on the applicant's visa commencement day and ending at the earlier of:
    - 5 years after that day; and
    - the day on which the applicant makes the application;

  including the duration of the illness or injury; and
- whether a close family member of the applicant died during that period; and
- whether the applicant experienced a traumatic experience during that period; and
- whether any reasons of a compelling and compassionate reason existed during the period to prevent the applicant from completing the 510 hours of English language tuition during that period.

This amendment provides the matters that the Secretary must have regard to in making a decision on an application for an extension of the 5 year time limit for a person to complete their English language tuition.

*Regulation 8 – Citizenship courses*

Section 4E of the Education Act provides that from 1 January 2011 the Minister may arrange for citizenship courses to be provided inside or outside Australia to persons proscribed by the Education Regulations.

New regulation 8 provides for new section 4E of the Education Act a person to whom citizenship courses may be provided is a person who:

- has made an application under subsection 21(2) of the *Australian Citizenship Act 2007* (Citizenship Act) to become an Australian citizen; and
- claims to be able to satisfy the Minister of the matters set out in subsection 21(2) of the Citizenship Act.

This amendment provides that the Minister may arrange for citizenship courses for a person who has made an application for citizenship under subsection 21(2) of the Citizenship Act.

**Schedule 3 – Amendment of *Australian Citizenship Regulations 2007***

Item [1] – Subregulation 12A(7)

This item substitutes the definitions of "conversion instrument" and "places and currencies instrument" currently in subregulation 12A(7) of the Citizenship Regulations.

*New definition of "conversion instrument"*

This item provides that "conversion instrument" means the instrument titled Payment of Visa Application Charges and Fees in Foreign Currencies, (IMMI 10/065), that commences on 1 January 2011.

The definition of "conversion instrument" is relevant to provisions in the Citizenship Regulations which allow a person who makes an application under the Citizenship Act to pay the prescribed fee in a foreign currency specified in the conversion instrument.

This item has the effect of replacing references to the current instrument in the definition of "conversion instrument" with references to a new instrument made under subregulation 5.36(1A) of Principal Regulations. The new instrument commences on 1 January 2011 and sets out visa application charge and fee amounts in foreign currencies which correspond to amounts payable in Australian dollars. If the amount of the application fee is mentioned in the conversion instrument, then payment can be made in the corresponding amount in the foreign currency.

By referring to the new instrument made under subregulation 5.36(1A) of the Principal Regulations, application fees and refunds made under the Citizenship Act can continue to be paid in foreign currencies. As a result of this amendment, unnecessary hardship will not occur for clients at overseas posts.

Due to the operation of section 14 of the *Legislative Instruments Act 2003*, it is not possible to incorporate by reference the instrument made under subregulation 5.36(1A) of the Principal Regulations as in force from time to time. Rather, the new instrument needs to be incorporated by reference at the time of commencement of the Citizenship Regulations.

Instruments made under the Principal Regulations are incorporated in the Citizenship Regulations because the Citizenship Act does not currently permit the Minister to make instruments under the Citizenship Regulations.

*New definition of "places and currencies instrument"*

This item provides that "places and currencies instrument" means the instrument titled Places and Currencies for Paying of Fees, (IMMI 10/066), and commences on 1 January 2011.

The definition of "places and currencies instrument" is relevant to provisions in the Citizenship Regulations which allow a person who makes an application under the Citizenship Act to pay the prescribed fee in a foreign country and a foreign currency specified in the places and currencies instrument.

This item has the effect of replacing references to the current instrument in the definition of "places and currencies instrument" with reference to a new instrument made under subregulation 5.36(1) of the Principal Regulations. The new instrument commences on 1 January 2011 and sets out the places and currencies for paying fees.

By referring to the new instrument made under subregulation 5.36(1) of the Principal Regulations, application fees and refunds made under the Citizenship Act may continue to be paid in foreign countries and foreign currencies. As a result of this amendment, unnecessary hardship will not occur for clients at overseas posts.

Due to the operation of section 14 of the *Legislative Instruments Act 2003*, it is not possible to incorporate by reference the instrument made under subregulation 5.36(1) of the Principal Regulations as in force from time to time. Rather, the new instrument needs to be incorporated by reference at the time of commencement of the Citizenship Regulations.

Instruments made under the Principal Regulations are incorporated in the Citizenship Regulations because the Citizenship Act does not currently permit the Minister to make instruments under the Citizenship Regulations.